

Permit: USACE Permit No. 200111049

### **FINAL ADMINISTRATIVE PENALTY ORDER**

Under the authority granted by 33 U.S.C. § 1319(g) and 33 CFR Part 326.6, I, Colonel John E. Pulliam, Jr., District Engineer, Wilmington District, issue this order assessing a Class 1 Administrative Penalty for violation of the above-referenced permit.

**Name/Address of Permittee:**

Fortune Bay Golf Club, LLC

Harbinger, North Carolina 27941

**Permitted Activity:**

The discharge of earthen fill material within 221,720 square feet (5.09 acres) of Department of the Army (DA) jurisdictional wetlands and the excavation of earthen material from 108,029 square feet (2.48 acres) of DA jurisdictional wetlands, to facilitate the construction of a residential golf community, on property located off U.S. Highway 158, adjacent to the North River and the Albemarle Sound, in Powell's Point, Currituck County, North Carolina, consistent with the application and plans for USACE Permit No. 200111049.

**Condition(s) or Limitation(s) of Permit Reportedly Violated:**

Fortune Bay Golf Club, LLC, failed to comply with special condition b. of the permit, which states, "The Permittee shall undertake the construction and monitoring of 2.51 acres of forested wetlands as described in the approved plan entitled *Mitigation Plan for Kilmarlic Residential Golf & Community*, prepared April 15, 2002, as revised April 17, 2002. The construction will be implemented concurrently with all phases of construction activities undertaken on this site as authorized by this permit."

**Description of the Nature of the Violation(s):**

Fortune Bay Golf Club, LLC, constructed the golf course and residential community without complying with this permit condition. Fortune Bay Golf Club, LLC, only recently completed construction of the required compensatory mitigation work.

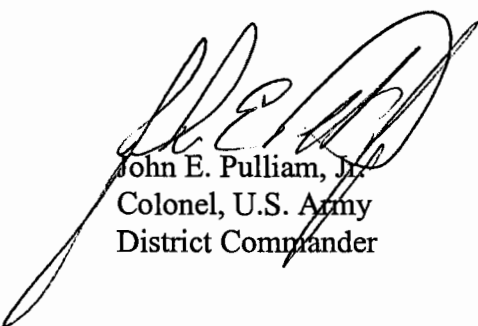
It is my decision that a Class 1 Administrative Penalty in the amount of \$11,000 shall be assessed against the permittee. Permittee will pay the penalty by cashier's or certified check, payable to FAO, USAED Wilmington, and delivered to the Office of Counsel, U.S. Army Engineer District,

P.O. Box 1890, Wilmington, North Carolina, 28402, within 30 days from the effective date of this letter.

The issuance of this Order constitutes final U.S. Army Corps of Engineers action in this case for purposes of judicial review.

This order will become effective 30 calendar days following its issuance unless an appeal is taken pursuant to 33 U.S.C. § 1319(g)(8) or a hearing is granted. Since no hearing was held prior to the issuance of this Order, a prior commenter may file a petition for a hearing within the 30-day period.

Issued this 21<sup>st</sup> day of March 2006.



John E. Pulliam, Jr.  
Colonel, U.S. Army  
District Commander